



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The peddler's Motor Inn--Second Request for
Reconsideration
File: B-227110.3, B-227111.3
Date: September 14, 1987

DIGEST

1. Protester's reliance on time of receipt denial of agency-level protest after the proposal closing date, which constitutes initial adverse agency action on the agency-level protest, does not extend the time for filing a protest with the General Accounting Office.
2. Second request for reconsideration of a protest dismissed as untimely is denied where the protester does not show errors of law or fact in the dismissal which warrant reversal or modification.

DECISION

The Peddler's Motor Inn (PMI) requests a second reconsideration of our decision, The Peddler's Motor Inn, B-227110, B-227111, July 29, 1987, 87-2 C.P.D. ¶ 112, in which we dismissed PMI's protest against the Air Force's cancellation and reissuance of a solicitation as untimely. The protest was filed in our Office more than 10 working days after the agency proceeded with a scheduled proposal closing date without taking the corrective action requested by PMI in its agency-level protest, which constitutes initial adverse agency action under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1987).

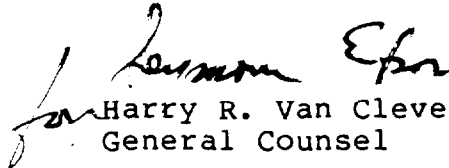
We deny the second request for reconsideration.

PMI asserts, as it did in its prior reconsideration request, that while it filed its agency-level protest on April 15, 1987, and the proposal closing occurred as scheduled on April 16, PMI had no reason to believe that its protest had been denied until April 25, when it received a letter from the Air Force specifically denying the protest. In support of this argument, PMI points out that it received a letter from the Air Force dated April 16, acknowledging receipt of PMI's protest and advising that PMI would be notified as soon as a decision was rendered on the matter.

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Notwithstanding this letter, PMI knew or should have known that proposal closing had taken place as scheduled. The Air Force letter did not advise that the closing had been postponed. As we pointed out in our prior decision dismissing PMI's reconsideration request, we have consistently held that the fact that the procuring agency receives proposals on a scheduled closing date without taking the corrective action requested by the protester constitutes initial adverse agency action under our Bid Protest Regulations, 4 C.F.R. § 21.0(e). Further, as we pointed out in our original decision, the fact that an agency subsequently formally denies an agency-level protest does not alter the protester's responsibility to conform to the filing requirements under our regulations. The Air Force's April 16 letter may not serve to waive the timeliness requirements under our Bid Protest Regulations, Unicom Systems, Inc., B-222601.4, Sept. 15, 1986, 86-2 C.P.D. ¶ 297. Where the closing is not postponed, such an agency letter does not change the protester's filing obligations under our regulations--the closing date remains the initial adverse agency action for timeliness purposes. Hartridge Equipment Corp.--Request for Reconsideration, B-219982.2, Oct. 17, 1985, 85-2 C.P.D. ¶ 418.

Accordingly, the second request for reconsideration is denied.


Harry R. Van Cleve
General Counsel